

DAVID H. BARTICK  
LAW OFFICES OF DAVID H. BARTICK  
*Certified Specialist, Criminal Law*  
California State Bar No. 126132  
101 West Broadway, Suite 1950  
San Diego, California 92101-8220  
Telephone: (619) 231-8900  
Facsimile: (619) 231-8075  
Email: [db@barticklaw.com](mailto:db@barticklaw.com)

Attorney for Defendant  
Jose Raul Ayala

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

(Honorable Janis L. Sammartino, Judge)

19 TO: KAREN P. HEWITT, United States Attorney, and to DAVID D. LESHNER, Assistant United States Attorney:

21 PLEASE TAKE NOTICE that on August 29, 2008, at the hour of 1:30 P.m., or as soon  
22 thereafter as counsel may be heard, defendant JOSE RAUL AYALA, by and through his attorney  
23 DAVID H. BARTICK, will respectfully move the Court for an order granting the following motions.

24 | / / / /

25 | / / / /

26 | / / / /

27 | / / / /

28 | / / / /

## MOTION FOR DISCOVERY

Pursuant to Rules 12 and 16 of the Federal Rules of Criminal Procedure, the *Jencks Act* (18 U.S.C. § 3500), *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, the Fourth, Fifth, and Sixth Amendments to the Constitution of the United States, and the general supervisory powers of this Court, hereby moves the Court for an Order compelling the Government to disclose, or in the case of tangible evidence to produce for inspection and copying, all evidence and information in the possession, custody or control of the Government which may be favorable to the defendant, or material on the issue of guilt or innocence, or which could lead to material evidence, or evidence or information which could be useful in the examination of witnesses at trial; and for disclosure and inspection to include, but not limited to, the following:

11        1. All statements of the defendant, whether before or after indictment, whether recorded or  
12 unrecorded, oral or written, signed or unsigned, made to Government agents (including informants)  
13 and/or persons other than Government agents who are possible Government witnesses, which are  
14 relevant to the crimes charged, either with or without the defendant's knowledge that such persons  
15 were Government agents and/or possible Government witnesses at the time said statements were  
16 allegedly made.

17           2. The full and complete extent of any surveillance undertaken with regard to this case,  
18 including:

- 19                             (a) Any and all such surveillance records;

20                             (b) Any and all reports on such surveillance;

21                             (c) Any and all rough notes made with regard to such surveillance;

22                             (d) The names of the persons conducting or participating in the surveillance, as well

23 as the date, time, place, and object of the surveillance.

24       3. All business records which the Government intends to introduce at trial, including but not  
25 limited to any bank statements or bank books connected to any defendant or co-conspirator or  
26 Government witness.

27       4. The prior criminal record, if any, of the defendant, and a statement as to whether or not the  
28 Government intends to use any of the prior criminal record at the trial of the instant case in either its

1 case-in-chief or for purposes of impeachment. Also, any prior similar acts or prior bad acts that the  
2 government intends to introduce into evidence.

3       5. The statements of all person the Government expects to call as witnesses at the trial of this  
4 cause. In particular, defendant requests any notes taken by any Government personnel of any  
5 interview conducted of said informants, or unindicted co-conspirators, so that defendant might have  
6 an opportunity to test the validity of their statements. If the statements were oral and given to any  
7 Government agent, defendant requests that they be committed to writing.

8       6. The statements of all persons having relevant information about this case, whether  
9 inculpatory or exculpatory, who the Government does not intend to call at the time of trial.

10       7. The name, address, and phone number of all persons the Government intends to call as  
11 witnesses at the trial in its case-in-chief. This procedure will facilitate the trial and avoid the request  
12 of a continuance at trial so that defense counsel can have an opportunity to investigate the background  
13 of the witnesses and prepare appropriate cross-examination.

14       8. The names of all person who have given relevant information to the Government about the  
15 instant case whom the Government does not intend to call as witnesses at the trial, including all  
16 statements, reports, and notes.

17       9. The conviction records of all witnesses the Government intends to call in this case-in-chief,  
18 or any other evidence which would impeach the credibility of persons whom the Government intends  
19 to call as witnesses.

20       10. The grand jury testimony of all participating witnesses in and percipient witnesses to the  
21 crimes herein charged against the defendant.

22       11. Copies of any and all search warrants (including affidavits) in support thereof and  
23 inventories listing articles seized when executing said warrants used by the Government to obtain any  
24 evidence in the instant case.

25       12. An inventory listing all items seized without a warrant, and the location of the seizure,  
26 detailing all items seized in the Government's investigation of the instant case.

27       13. Copies of any and all raw notes taken by Drug Enforcement Administration ("DEA")  
28 agents, Narcotic Task Force agents, United States Customs Officers/Border Patrol, and/or any other

1 law enforcement personnel, informant(s), or other Government witnesses, regarding observations,  
2 negotiations, arrests, seizure of items, or interviews with defendant.

3           14. The results, including any and all written reports, of any and all laboratory tests conducted  
4 by any agents of or on behalf of the Government concerning the examination of physical,  
5 photographic, or written evidence connected with the investigation of this case including the identity  
6 of all experts consulted for the purpose of examining any real evidence.

7        15. All books, papers, business records, photographs, logs, notes, tangible objects, and/or  
8 documents which are in the possession, custody, or control of the Government, and which are material  
9 to the preparation of the defendant's defense against the crimes charged, and/or intended for use by  
10 the Government in its case-in-chief, and/or were obtained or belong to the defendant.

11        16. Copies of all documents, statements, and any other evidence including, but not limited to,  
12 a written summary of all oral evidence and statements, now known to the prosecution or which may  
13 become known or which through due diligence may be learned from the investigating agents or  
14 witnesses in this case or persons interviewed in connection with the investigation, which is  
15 exculpatory in nature or favorable to defendant or which may lead to material which is exculpatory  
16 in nature or favorable to defendant, or which tends to negate or mitigate the guilt of defendant, as to  
17 the offenses charged, or which would tend to reduce the punishment therefor.

## MOTION FOR DISCLOSURE OF INFORMANT

Defendant contends that he is entitled to disclosure of the informant(s), as it is the defendant's belief that the confidential informants were material witnesses and active participants in the alleged racketeering, drug conspiracy and money laundering operations.

**MOTION FOR ATTORNEY *VOIR DIRE***

23       Defendant also respectfully requests this Honorable Court share the burden and the privilege  
24      of *voir dire* in this case will counsel at least to some minimal extent, if not to delegate it to trial  
25      counsel in its entirety.

MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS

As of the date of the writing of this motion, Defendant has received an initial set of discovery from the Government. It is anticipated that additional discovery will be disseminated by the

1 Government. Defendant will seek leave of court to file further motions based upon any newly  
2 disseminated discovery or other issues which arise subsequent to the filing of these motions.

3 These motions will be based on this Notice; the attached Memorandum of Points and  
4 Authorities; other motions filed by other parties in this case; the records and files of the clerk of the  
5 court; and, finally, on such other matter properly presented to the court at or before the hearing on  
6 these motions.

7  
8 Dated: August 13, 2008

LAW OFFICES OF DAVID H. BARTICK

9  
10 /s/ David H. Bartick  
11 DAVID H. BARTICK  
12 Attorney for Defendant  
13 Jose Raul Ayala  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 DAVID H. BARTICK  
2 LAW OFFICES OF DAVID H. BARTICK  
*Certified Specialist, Criminal Law*  
3 California State Bar No. 126132  
4 101 West Broadway, Suite 1950  
San Diego, California 92101-8220  
Telephone: (619) 231-8900  
Facsimile: (619) 231-8075  
Email: [db@barticklaw.com](mailto:db@barticklaw.com)

6 Attorney for Defendant  
Jose Raul Ayala

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

(Honorable Janis L. Sammartino, Judge)

11 UNITED STATES OF AMERICA, ) Criminal Case No. 08CR2431-04-JLS  
12 Plaintiff, ) Date: August 29, 2008  
13 v. ) Time: 1:30 p.m.  
14 )  
15 JOSE RAUL AYALA (04), ) MEMORANDUM OF POINTS AND  
16 ) AND AUTHORITIES IN SUPPORT  
17 Defendant. ) OF MOTIONS AND MOTIONS FOR:  
18 ) (1) DISCOVERY  
 ) (2) DISCLOSURE OF INFORMANT  
 ) (3) ATTORNEY *VOIR DIRE*  
 ) (4) LEAVE TO FILE ADDITIONAL  
 ) MOTIONS

19 Defendant JOSE RAUL AYALA, by and through his attorney DAVID H. BARTICK,  
20 respectfully submits the following Memorandum of Points and Authorities in support of the above-  
21 entitled motions.

## **STATEMENT OF FACTS**

23 This Statement of Facts is based upon discovery provided to date by the United States  
24 Attorney's Office. Defendant, Jose Raul Ayala expressly reserves the right to contradict, explain or  
25 amplify any of the facts mentioned herein at trial.

26 The underlying indictment alleges that beginning on a date unknown to the grand jury and  
27 continuing July 12, 2008, Mr. Ayala and four other codefendants allegedly conspired with each other  
28 to distribute 1 kilogram or more of heroin. Specifically it is alleged that Mr. Ayala flew from Portland

1 Oregon to San Diego, California for the purpose of conspiring to purchase heroin. On July 12, 2008,  
 2 codefendant Emmanuel Bautista allegedly met with the "source of supply" to negotiate the purchase  
 3 price of heroin at the rate of \$16,000.00 per kilogram. Subsequently, codefendants Emmanuel Bautista  
 4 and Paul Padilla met with the source of supply in a parking lot, and Padilla took possession of a bag  
 5 which he allegedly believed to contain multiple kilograms of heroin.

6 Mr. Ayala was arrested in a nearby parking lot, and he was subsequently transported to the  
 7 Metropolitan Correctional Center.

8 **POINTS AND AUTHORITIES**

9 **I**

10 **DISCOVERY**

11 To preserve his rights and guard against undue prejudice due to delay, defendant seeks an order  
 12 compelling discovery of the following material, and further seeks an order establishing a discovery  
 13 schedule in this case. Defendant requests full discovery pursuant to Rule 16 of the Federal Rules of  
 14 Criminal Procedure,<sup>1</sup> *Brady v. Maryland*, 373 U.S. 83 (1963), the Jencks Act (18 U.S.C. § 3500), and  
 15 the Fifth and Sixth Amendments of the United States Constitution. For the purposes of Rule 16  
 16 discovery and *Brady* the prosecutor "will be deemed to have knowledge of and access to anything in  
 17 the possession, custody or control of any federal agency participating in the same investigation of the  
 18 defendant." *United States v. Bryan*, 868 F.2d 1032, 1036 (9th Cir. 1989). Defendant requests that  
 19 discovery be completed reasonably in advance of trial so that he can make use of the materials  
 20 provided in his defense.

21 This court has the authority to order the government to provide discovery by a certain date and  
 22 bar the use of any evidence not disclosed after that date. This authority is expressly conferred under  
 23 Rule 16(d)(2) and has been upheld in a number of cases. See, e.g. *Taylor v. Illinois*, 484 U.S. 400  
 24 (1988) (exclusion of surprise defense witness for discovery violation does not violate defendants  
 25 rights); *United States v. Aceves-Rosales*, 832 F.2d 1155 (9th Cir. 1987) (not abuse of discretion to bar  
 26 defense use of evidence discovered and subpoenaed the day before trial but not disclosed until after  
 27

---

28 <sup>1</sup>Unless otherwise indicated, all further rule references will be to the Federal Rules of Criminal  
 Procedure.

1 government had rested in violation of Rule 16); *United States v. Burgess*, 791 F.2d 676 (9th Cir. 1986)  
2 (government barred from making any use, including use for impeachment, of non-disclosed  
3 inculpatory statement made to DEA agent). The Court's authority to enforce such orders against the  
4 government by excluding evidence is beyond dispute. *United States v. Roybal*, 566 F.2d 1109, 1110-  
5 11 (9th Cir. 1977); *see also United States v. Gatto*, 763 F.2d 1040, 1046-47 (9th Cir. 1985); *United*  
6 *States v. Schwartz*, 857 F.2d 655 (9th Cir. 1988). A discovery schedule is authorized by Rule 16(d)(2)  
7 and will serve to avoid delay, conserve scarce judicial resources, prevent surprise, and further the  
8 search for truth at trial. This Court should therefore impose a discovery schedule and bar the  
9 introduction of evidence not disclosed by that date. Defendant seeks discovery of the following:

10       A. Statements of the Defendant.

11       Pursuant to Rule 16(a)(1)(A), defendant requests full discovery concerning any statements  
12 made by him. The rule requires disclosure of any statement of the defendant's in the possession of the  
13 government in any form. It also requires disclosure of any portion of any report or other written record  
14 containing the substance of a statement by the defendant made to a known government agent, and the  
15 substance of any other statement made by the defendant to a known government agent which the  
16 government intends to use at trial for any purpose.

17       B. Request for Criminal Record, Prior Bad Acts, and Notice Under Rule 404(b) of the Federal  
18       Rules of Evidence.

19       Defendant requests all evidence, documents, records of judgments and convictions,  
20 photographs and tangible evidence, and information pertaining to any prior arrests and convictions or  
21 any prior similar acts or prior bad acts of defendant. The defendant's prior criminal record must be  
22 produced under Rule 16(a)(1)(B). Evidence of prior similar acts or prior bad acts is discoverable under  
23 Rule 16(a)(1)(C), and Rules 404(b) and 609 of the Federal Rules of Evidence. *See United States v.*  
24 *Cook*, 608 F.2d 1175 (9th Cir. 1979) (*en banc*), *cert. denied*, 444 U.S. 1034 (1980). Pursuant to  
25 Federal Rule of Evidence 404(b), defendant specifically requests notice concerning any evidence the  
26 government plans to introduce against him under Rule 404(b) and any prior or subsequent act relating  
27 to a specific instance of conduct which the government will attempt to introduce under Federal Rule  
28 of Evidence 608(b).

1           C. Other Documents and Physical Evidence.

2           Pursuant to Rule 16(a)(1)(C), defendant requests full discovery of all physical and documentary  
3 evidence and objects, including but not limited to all books, papers, documents, photographs, tangible  
4 objects, or copies or portions thereof which the government intends to introduce as evidence in its  
5 case-in-chief, or is material to the preparation of the defense, or was obtained from the defendant or  
6 which the government claims belong to the defendant.

7           D. Scientific Reports and Examination.

8           Pursuant to Rule 16(a)(1)(D), defendant requests full discovery of all scientific tests or  
9 experiments and results of physical or mental examinations which are material to the defense or are  
10 to be used as evidence by the government at trial. The government must also give the defense  
11 adequate notice of the use of the scientific tests or expert witnesses in order that the defense has  
12 "adequate time to obtain an expert to assist him in attacking the findings of the government's . . .  
13 expert." *United States v. Barrett*, 703 F.2d 1076, 1081 (9th Cir. 1983).

14           E. Witness Discovery.

15           Defendant requests disclosure of any evidence that any prospective witness is under  
16 investigation by federal, state or local authorities for any criminal or official misconduct. *United States*  
17 *v. Chitty*, 760 F.2d 425 (2d Cir.), *cert. denied*, 474 U.S. 945 (1985). Defendant also requests the  
18 criminal records of government witnesses in order to explore the issue of bias. *See United States v.*  
19 *Strifler*, 851 F.2d 1197 (9th Cir. 1988), *cert. denied*, 489 U.S. 1032 (1989); *United States v. Alvarez-*  
20 *Lopez*, 559 F.2d 1155, 1157 (9th Cir. 1977).

21           Defendant further requests that the government review for impeachment material the personnel  
22 files of any agents it intends to produce as witnesses. *United States v. Henthorn*, 931 F.2d 29 (9th Cir.  
23 1991). *Henthorn* requires that all material information should be disclosed, and any information  
24 which is arguably material should be submitted to the Court for *in camera* examination. *Id.* at 30-32.

25           Defendant requests disclosure of any evidence, including any medical or psychiatric report or  
26 evaluation, tending to show that any prospective witness's ability to perceive, remember, communicate,  
27 or tell the truth is impaired; and any evidence that a witness has ever used narcotics or other controlled  
28 substance, or has ever been an alcoholic. *Chavis v. North Carolina*, 637 F.2d 213, 224 (4th Cir. 1980);

1       *United States v. Butler*, 567 F.2d 885 (9th Cir. 1978).

2           F. Preservation of Jencks Act Material.

3       Defendant requests that the government preserve all rough notes and other materials arguably  
 4 subject to production under Title 18, United States Code, Section 3500 (the "Jencks Act") or under  
 5 Rules 12(I) or 26.2. The government is placed on notice that all such materials will be requested by  
 6 the defense concerning any government witness called to testify at trial, and all law enforcement  
 7 witnesses who testify, regardless of by whom called, at all pretrial proceedings.

8       The government is also placed on notice that the defense will seek *in camera* review of all such  
 9 materials which the government claims are not subject to production, and that such material must be  
 10 preserved. *See United States v. Harris*, 543 F.2d 1247 (9th Cir. 1976). Recognizing that such  
 11 materials, with the exclusion of materials producible under *Brady v. Maryland*, 373 U.S. 83 (1963),  
 12 are not subject to production until the close of the witness's testimony, the defense nonetheless asks  
 13 that such material be disclosed reasonably in advance of the relevant hearing so as not to unduly delay  
 14 the proceedings.

15           G. Disclosure Concerning Informants and Percipient Witnesses.

16       Defendant requests discovery concerning all informants who were percipient witnesses to any  
 17 of the counts alleged against him, or who otherwise participated in the illegal conduct alleged against  
 18 the defendant, and disclosure of each informant's identity and location, as well as disclosure of the  
 19 existence of any other percipient witnesses unknown or unknowable to the defense. *See Roviaro v.*  
 20 *United States*, 353 U.S. 52, 61-62 (1957); *United States v. Ordonez*, 737 F.2d 793, 808 (9th Cir. 1984).  
 21 The identity and whereabouts of all informants should be disclosed so that defendant has the  
 22 opportunity to investigate the credibility and background of the informant prior to trial and to possibly  
 23 call the informant as a witness at trial. Furthermore, defendant specifically requests that the  
 24 government produce the confidential informants. The government has an obligation to accomplish this  
 25 or show that despite reasonable efforts, it was not able to do so." *United States v. Hart*, 546 F.2d 798,  
 26 799 (9th Cir. 1976) (en banc).

27       Furthermore, any information derived from informants that exculpates or tends to exculpate  
 28 the defendant, or furnishes sentencing mitigation must also be disclosed. In addition, the government

1 must also disclose any information indicating bias on the part of an informant, generally known as  
2 *Giglio* material, see *Giglio v. United States*, 405 U.S. 150 (1972), and the line of cases concerning  
3 discovery of material bearing on informant credibility. Such information would include what, if any,  
4 inducements, favors, or payments were made to informants to obtain his or her cooperation with the  
5 government.

#### H. Other Exculpatory Evidence.

7 Pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, the defendant moves that  
8 the Court order the government to immediately disclose all evidence in its possession favorable to him  
9 on the issue of guilt or to punishment. The defendant requests the Court order the government to make  
10 a diligent effort to ascertain what evidence it has or might reasonably discover which would create a  
11 reasonable doubt as to the defendant's guilt in the mind of the trier of fact, and to surrender any such  
12 evidence to the defendant immediately upon its discovery. *Hilliard v. Spalding*, 719 F.2d 1443 (9th  
13 Cir. 1983) (government suppression of possible exculpatory evidence denied defendant due process;  
14 no showing of prejudice required); *United States v. Gardner*, 605 F.2d 1076 (9th Cir. 1980).

15 This request includes the statements of any third persons, whether a government agent, witness,  
16 or otherwise, which tends to exculpate the defendant from the charges contained in the indictment.

II

## **DISCLOSURE OF INFORMANTS**

THE GOVERNMENT MUST DISCLOSE THE IDENTITY AND WHEREABOUTS OF THE CONFIDENTIAL INFORMANTS AND PROVIDE THE DEFENSE WITH PRETRIAL ACCESS TO ANY SUCH INFORMANTS.

22 In *Roviaro v. United States*, 353 U.S. 53, 77 S. Ct. 623, 1 L.Ed.2d 639 (1957), the Supreme  
23 Court held that a confidential informant's identity must be disclosed when the informant's identity or  
24 the contents of the informant's communication is relevant and helpful to the accused's defense, or is  
25 essential to the fair determination of the cause. *Id.* at 60-61. In *Roviaro* the Court noted that the  
26 privilege to withhold from disclosure the identity of informants is the Government's privilege rather  
27 than the informant's privilege. *Id.* at 59. The purpose of the privilege is to further and protect the  
28 public interest in effective law enforcement by encouraging citizens to tell law enforcement officials

1 about crimes and by preserving anonymity. *Id.* However, the scope of the privilege is limited by its  
 2 underlying purpose. *Id.* at 60. One limitation arises from the fundamental requirements of fairness.  
 3 As stated by the Court:

4       Where the disclosure of an informant's identity, or of the contents of his  
 5 communication, is relevant and helpful to the defense of an accused, or  
 6 is essential to a fair determination of a cause, the privilege must give  
 7 way. In these situations the trial court may require disclosure and, if the  
 Government withholds the information, dismiss the action.

7 353 U.S. at 60-61 (footnote omitted).

8       The Court in *Roviaro* believed, however, that there can be no fixed rule with respect to  
 9 disclosure of an informant. *Id.* at 62. Rather, the court must balance the public interest in protecting  
 10 the flow of information against the defendant's right to prepare his defense. *Id.* The court should  
 11 consider the particular circumstances of each case, taking into consideration the crime charged, the  
 12 possible defenses, the possible significance of the informer's testimony, and other relevant factors. *Id.*

13       In *Roviaro* the Court noted that the informer for the government was the sole participant, other  
 14 than the defendant, in the herein transaction charged. *Id.* at 64. The informer was the only witness who  
 15 was in a position to amplify or contradict the testimony of government witnesses. *Id.* The Court thus  
 16 concluded that the trial court committed prejudicial error in permitting the government to withhold the  
 17 identity of the informer despite repeated demands by the defendant for his disclosure. *Id.* at 65.

18       The Ninth Circuit has interpreted the "relevant and helpful" language of *Roviaro* as requiring  
 19 disclosure of the identity of an informant when the informant was a percipient witness. In *United States*  
 20 *v. Cervantes*, 542 F.2d 773, 775 (9th Cir. 1976) (en banc), the court stated:

21       The Government acknowledges that the informant was a percipient  
 22 witness to the transaction. It therefore supplied Cervantes with the  
 informant's identity. *See Roviaro v. United States . . .*

23       In *United States v. Hernandez*, 608 F.2d 741 (9th Cir. 1979) the court also recognized that the  
 24 informer percipient witness, a man named Smith, must be disclosed. The court stated:

25       In light of Smith's role in the narcotic transaction with which the  
 26 appellants were charged, it cannot be said that disclosure of Smith's  
 27 identity would not have been "relevant and helpful" to the appellants'  
 28 defense. . . Because Smith was a participant in the events that were  
 critical to the prosecution's case, no claim could be raised under  
*Roviaro*, nor was it raised, that Smith's identity could be lawfully  
 withheld from the appellants.

*Id.* at 744-745. See also *United States v. Bonilla*, 615 F.2d 1662, 1264 (9th Cir. 1980) (defendant entitled to learn the informant's identity because the informant was a percipient witness to the criminal transaction underlying his conviction).

When an informant's testimony is essential to a fair determination of a cause, the government may be required to disclose the informant's identity and address. *United States v. Roberts*, 388 F.2d 646, 6480649 (2nd Cir. 1968). Thus, for example, the court has discretion to compel disclosure of an informant's identity even when use of the informant goes only to probable cause. See *United States v. Anderson*, 509 F.2d 724, 729 (9th Cir. 1974).

9        In the present case, it is apparent that there were one or more informants who provided  
10 information to the United States Government. At the writing of this motion, the Defense has been  
11 provided with a very minute amount of discovery, when contrasted with the discovery that will  
12 eventually be disseminated in this case. It is therefore respectfully requested that the undersigned be  
13 given leave of court to further develop this argument once discovery is provided to the Defense.

III

**COUNSEL SHOULD BE ALLOWED TO PARTICIPATE IN THE  
JURY *VOIR DIRE* WITH THE COURT**

17 Pursuant to Rule 24(a), Federal Rules of Criminal Procedure; and in accordance with the  
18 language and sentiments of *United States v. Ible*, 630 F.2d 389 (5th Cir. 1988); *United States v. Ledee*,  
19 549 F.2d 990 (5th Cir. 1977); and *United States v. Mutchler*, 559 F.2d 955 (5th Cir. 1977), defendant's  
20 motion permitting attorney *voir dire* in the case should be granted, whether in whole or in part.

21 An important function of *voir dire* examination is to elicit information which could serve as the  
22 bases of challenges for cause. Second, the process facilitates more intelligent use of peremptory  
23 challenges. Third, the *voir dire* permits introduction to potential jurors not only the parties and counsel,  
24 but the general principles of case as well; as such, it has traditionally been viewed as the time to  
25 establish rapport. LaFave, *Criminal Procedure* (1985 ed.) §21.3, at 840.

IV

**DEFENDANT SHOULD BE GRANTED LEAVE TO FILE  
ADDITIONAL MOTIONS**

As of the filing of this motion, the Defense has been provided with approximately 31 pages of discovery from the Government. The production of additional discovery will demonstrate the need for filing other motions. Accordingly, premised upon the dissemination of additional discovery, it is requested that the defendant be given an opportunity to file appropriate motions at a later date.

## **CONCLUSION**

6 For all of the foregoing reasons JOSE RAUL AYALA, by and through his attorney DAVID  
7 H. BARTICK, respectfully requests that the above-entitled motions be granted.

9 || Dated: August 13, 2008

## LAW OFFICES OF DAVID H. BARTICK

/s/ David H. Bartick  
DAVID H. BARTICK  
Attorney for Defendant  
Jose Raul Ayala

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA, ) Criminal Case No. 08CR2431-04-JLS  
Plaintiff, )  
v. ) PROOF OF SERVICE  
JOSE RAUL AYALA (04), )  
Defendant. )

**IT IS HEREBY CERTIFIED THAT:**

I, DAVID H. BARTICK, am a citizen of the United States and am at least eighteen years of age. My business address is 101 West Broadway, Suite 1950, San Diego, California 92101-8220.

I am not a party to the above-entitled action. I have caused service of **Notice of Motion and Motion for Discovery, Disclosure of Informant, Attorney Voir Dire and Leave to File Additional Motions and Points and Authorities** on the following party by electronically filing the foregoing with the Clerk of the District Court using the ECF System, which electronically notifies the following individuals:

David D. Leshner, [david.leshner@usdoj.gov](mailto:david.leshner@usdoj.gov)

Robert A Garcia robertim@pacbell.net

Timothy R Garrison [Timothy\\_Garrison@fd.org](mailto:Timothy_Garrison@fd.org), Sylvia Freeman[Sylvia\\_Freeman@fd.org](mailto:Sylvia_Freeman@fd.org)

Wendy S Gerboth [wendysgerboth@hotmail.com](mailto:wendysgerboth@hotmail.com)

Stephen W Peterson swplaw@sbcglobal.net

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on August 13, 2008.

/s/ David H. Bartick  
DAVID H. BARTICK